

interim milestone activities, and other complex SEPs may not be appropriate in those administrative enforcement actions where EPA lacks injunctive relief authority or is subject to a penalty ceiling. Specific guidance on the proper drafting of SEPs will be provided in a separate guidance document.

H. Failure of a SEP and Stipulated Penalties

If a SEP is not completed satisfactorily, the defendant/respondent should be required, pursuant to the terms of the settlement document, to pay stipulated penalties for its failure. Stipulated penalty liability should be established for each of the scenarios set forth below as appropriate to the individual case.

1. Except as provided in paragraph 2 immediately below, if the SEP is not completed satisfactorily, a substantial stipulated penalty should be required. Generally, a substantial stipulated penalty is between 50 and 100 percent of the amount by which the settlement penalty was mitigated on account of the SEP.

2. If the SEP is not completed satisfactorily, but the defendant/respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, no stipulated penalty is necessary.

3. If the SEP is satisfactorily completed, but the defendant/respondent spent less than 90 percent of the amount of money required to be spent for the project, a small stipulated penalty should be required. Generally, a small stipulated penalty is between 10 and 25 percent of the amount by which the settlement penalty was mitigated on account of the SEP.

4. If the SEP is satisfactorily completed, and the defendant/respondent spent at least 90 percent of the amount of money required to be spent for the project, no stipulated penalty is necessary.

The determinations of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the defendant/respondent has made a good faith, timely effort to implement the SEP is in the sole discretion of EPA.

I. EPA Procedures

1. Approvals

The authority of a government official to approve a SEP is included in the official's authority to settle an

enforcement case and thus, subject to the exceptions set forth here, no special approvals are required. The special approvals apply to both administrative and judicial enforcement actions as follows:¹⁴

a. Regions in which a SEP is proposed for implementation shall be given the opportunity to review and comment on the proposed SEP.

b. In all cases in which a SEP may not fully comply with the provisions of this Policy, the SEP must be approved by the EPA Assistant Administrator for Enforcement and Compliance Assurance.

c. In all cases in which a SEP would involve activities outside the United States, the SEP must be approved in advance by the Assistant Administrator and, for judicial cases only, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice.

d. In all cases in which a SEP includes an environmental compliance promotion project, the SEP must be approved by the Office of Regulatory Enforcement in OECA. With time, this approval requirement may be delegated to Regional officials.

2. Documentation and Confidentiality

In each case in which a SEP is included as part of a settlement, an explanation of the SEP with supporting materials (including the PROJECT model printout, where applicable) must be included as part of the case file. The explanation of the SEP should demonstrate that the five criteria set forth in Section A.3 above are met by the project and include a description of the expected benefits associated with the SEP. The explanation must include a description by the enforcement attorney of how nexus and the other legal guidelines are satisfied.

Documentation and explanations of a particular SEP may constitute confidential settlement information that is exempt from disclosure under the Freedom of Information Act, is outside the scope of discovery, and is protected by various privileges, including the attorney-client privilege and the attorney work-product privilege. While individual Agency evaluations of proposed SEPs are confidential documents, this Policy is a public document and may be released to anyone upon request.

This Policy is primarily for the use of U.S. EPA enforcement personnel in settling cases. EPA reserves the right to change this Policy at any time, without prior notice, or to act at

¹⁴In judicial cases, the Department of Justice must approve the SEP.

variance to this Policy. This Policy does not create any rights, duties, or obligations, implied or otherwise, in any third parties.

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[OPPT-59344; FRL-4951-5]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-95-3. The test marketing conditions are described below.

DATES: This notice becomes effective April 24, 1995. Written comments will be received until May 25, 1995.

ADDRESSES: Written comments, identified by the docket number [OPPT-59344] and the specific TME number should be sent to: TSCA nonconfidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB-607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT-59344]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Vera Stubbs, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202) 260-5671.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test

marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-95-3. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-95-3. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-95-3

Date of Receipt: March 27, 1995. The extended comment period will close May 25, 1995.

Applicant: Reichhold Chemicals, Inc.
Chemical: Polyurethane adhesives.

Use: Adhesive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year.

Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health and the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

A record has been established for this notice under docket number [OPPT-59344] (including comments and data submitted electronically as described above). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NEM-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: April 24, 1995.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

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EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 24]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Ex-Im Bank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for review.

PURPOSE: The proposed Ex-Im Bank "Customer Service Satisfaction Survey," to exporters of U.S. goods and services, is to be completed by U.S. exporters who have used Ex-Im Bank's services. This survey is one of Ex-Im Bank's tools of providing an evaluation of the effectiveness, utility, strengths and weaknesses of, the relationships established between Ex-Im Bank and the exporting community.

The collection of the information will enable Ex-Im Bank to assess and report to the Executive Branch and the U.S. Congress the private sector's view of its Customer Service and its competitiveness, as required by Executive Order 12862.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

- (1) Type of request: new
- (2) Number of forms submitted: one
- (3) Form Number: EIB 95-7
- (4) Title of information collection: Customer Service Satisfaction Survey
- (5) Frequency of use: annual
- (6) Respondents: Exporters of U.S. goods and services
- (7) Estimated total number of annual responses: 1,000
- (8) Estimated total number of hours needed to fill out the form: 333.

ADDITIONAL INFORMATION OR COMMENTS:

Copies of the proposed application may be obtained from Tamzen Reitan, Agency Clearance Officer, (202) 565-3333. Comments and questions should be directed to Mr. Jeff Hill Office of Management and Budget, Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, (202) 395-3176. All comments should be submitted